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VIA ELECTRONIC SUBMISSION

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506
pubcom@finra.org

Re: FINRA Regulatory Notice 15-37, Financial Exploitation of Seniors and Other Vulnerable Adults

Dear Ms. Asquith:

The Investor Rights Clinic at Pace Law School, operating through John Jay Legal Services, Inc. (“PIRC”),¹ welcomes the opportunity to comment on FINRA’s rule proposal addressing the financial exploitation of seniors and other vulnerable adults. PIRC shares FINRA’s goal of protecting populations that are especially susceptible to financial exploitation. PIRC supports the proposed amendment to Rule 4512 and the adoption of proposed new Rule 2165, with some additional recommendations, as discussed below.

Trusted Contact Person—Proposed Amendments to Rule 4512

PIRC supports FINRA’s proposal to amend Rule 4512 to require firms to make reasonable efforts to obtain the name of and contact information for a trusted contact person upon the opening of a non-institutional customer’s account.

¹ PIRC opened in 1997 as the nation’s first law school clinic in which J.D. students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes. See Barbara Black, *Establishing A Securities Arbitration Clinic: The Experience at Pace*, 50 J. LEGAL EDUC. 35 (2000); see also Press Release, Securities Exchange Commission, SEC Announces Pilot Securities Arbitration Clinic To Help Small Investors - Levitt Responds To Concerns Voiced At Town Meetings (Nov. 12, 1997), available at <http://www.sec.gov/news/press/pressarchive/1997/97-101.txt>.

Proposed New Rule 2165

Temporary Hold on Disbursement of Funds or Securities

PIRC supports the part of FINRA's proposed new Rule 2165 which permits "qualified persons" who reasonably believe that financial exploitation is occurring to place temporary holds on disbursements of funds or securities from the accounts of "specified adult" customers.

PIRC recommends that FINRA seek more information on the logistics and cost of exploitation recognition in order to determine whether or not to expand the scope of the proposed rule to cover all investors or whether to expand the definition of specified adult.² PIRC has identified several additional questions to supplement the specific questions enumerated on pages 7-8 of the Request for Comment:

1. By what methodology are "qualified persons" at firms able to recognize exploitation?
2. Can this recognition be achieved through existing data and computer analysis?
3. To what extent is this already being done?
4. Does it require enhanced monitoring of "specified adults"?
5. Can recognition of exploitation be achieved without additional costs to firms?
6. If additional investments are required, must they be applied exclusively for the recognition of exploitation of "specified adults," or once a firm makes the initial investment, does it then have the ability to recognize exploitation of any of its investors at little or no cost beyond the initial investment?

The answers to these questions should help FINRA determine the best method to achieve its goal of protecting all investors from financial exploitation. If firms are already able to identify investor exploitation through existing data and analysis, and all that is required to end a particular instance of exploitation is the ability to protect investors pursuant to this proposed rule, then FINRA should expand the scope of the proposed rule beyond "specified adults" to protect all investors. Similarly, if implementing this rule for "specified adults" requires an initial investment by firms, but once that investment is made firms can implement the rule to protect all investors, then FINRA should expand the scope of this rule to cover all investors. However, if implementing the rule beyond specified adults is cost prohibitive at this time, then FINRA should focus on protecting especially vulnerable populations now with the goal of expanding the scope of the rule in the future to cover all investors.

Internal Review

PIRC supports the part of FINRA's proposed new Rule 2165 that requires firms that place temporary holds on disbursements of funds or securities from the accounts of "specified adult" customers to immediately initiate an internal review of the facts and circumstances that caused the qualified person to reasonably believe that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

² Question 6 in the Request for Comment section of the Regulatory Notice asks whether the definition of specified adult should be modified or eliminated.

Notification

PIRC supports the part of FINRA's proposed new Rule 2165 that requires firms to provide notification of the hold and the reason for the hold to all parties authorized to transact business on the account and, if available, the trusted contact person, no later than two business days after placing the hold. PIRC agrees that firms should not contact parties other than the specified adult, such as the trusted contact person, family member, and registered representative, if the firm reasonably believes they have engaged, are engaged, or will engage in the financial exploitation of the specified adult.

In addition, PIRC recommends that FINRA consider requiring firms to contact FINRA and the appropriate state regulatory authority if a qualified person at the firm reasonably believes an investor is being exploited.³ Such a provision would alert FINRA that a firm has relevant information about investor exploitation that FINRA could use to propose future rules that are responsive to the needs of vulnerable investors. The more information FINRA has on the identity of exploiters and the methodology of exploitation, the more likely it will be able to effectively monitor and prevent investor exploitation in the future. In addition, FINRA could exercise its regulatory leverage if the exploiter is affiliated with a member firm.

Record Retention

PIRC supports the part of FINRA's proposed new Rule 2165 that requires firms that place temporary holds on disbursements of funds or securities from the accounts of "specified adult" customers to retain records related to compliance with the rule, which shall be readily available to FINRA, upon request. In addition to requiring firms to make this information available to FINRA on request, PIRC recommends that FINRA develop a standardized method to collect such information and compile the data received in an investor exploitation database, which could assist FINRA in its efforts to track, prevent, and respond to investor exploitation.

Supervisory Procedures

PIRC supports the part of FINRA's proposed new Rule 2165 that requires firms that place temporary holds on disbursements of funds or securities from the accounts of "specified adult" customers to establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the rule.

³ This is not without precedent. For example, Missouri recently passed the Senior Savings Protection Act, which provides that a qualified individual who reasonably believes a specified adult is being exploited may contact the state department of health and senior services and the commissioner of securities. *See* <https://legiscan.com/MO/text/SB244/id/1224756/Missouri-2015-SB244-Enrolled.pdf>.

Thank you for the opportunity to comment.

Respectfully submitted,

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